IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.4218 OF 2006

Allister Anthony Pereira .. ..Applicant

Versus

The State of Maharashtra ..Respondent

Mr.A.P.Mundargi, Sr.Counsel i/b S.G.Rajput for applicant

Mr.S.S.Pednekar, APP for State

CORAM : S.C.DHARMADHIKARI, J.

DATE : 1ST DECEMBER, 2006

P.C.:

1. Applicant is arrested in connection with C.R.No.436 of 2006 registered at Khar Police Station for offences punishable under Sections 279, 336, 337, 338, 304 and 427 of IPC read with 185 of Motor Vehicles Act. He has been arrested on 12th November, 2006 and presently is in judicial custody.

2. The submission of Shri Mundargi, learned Senior

counsel appearing for applicant is that all investigations are complete. Applicant is in judicial custody. He submits that the learned Addl. Sessions Judge was in error in proceeding to analyse at this stage as to whether the case falls under Section 304 or 304A of IPC read with Section 279 thereof. He submits that even otherwise sufficient time has elapsed from the date of the incident. The applicant is 21 years of age. His driving licence has already been seized. The applicant is a Diploma Holder in Engineering and he is assisting his father in business. The applicant's father is a heart patient.

3. Mr. Mundargi states that the applicant is repenting for the act since the accident took place. He states that without prejudice to the rights and contentions of both sides the applicant is ready and willing to deposit a sum of Rs.3,50,000/= as compensation. Even at this stage applicant would have no objection if the amount could be disbursed to the family of the deceased and the injured. The said amount can be appropriated and paid over to the family of the injured/deceased in the following proportion.

1. Rs.30,000/= per deceased family

Rs.30,000/= x 7 deceased = Rs.2,10,000/=

2. Rs.15,000/= per injured
Rs.15,000/= x 6 injured who are discharged = Rs.90,000/=

3. Rs.25,000/= per injured
Rs.25,000/= x 2 injured who are still in hospital = Rs.50,000/=

4. The learned APP on the other hand does not dispute that the investigations are complete. However, he submits that offences alleged are serious. About seven persons have lost their life when the car ran over them and about eight are injured. All of them are from lower strata. They were labourers working at site. In such circumstances and when the applicant was driving the vehicle under the influence of liquor and at a very high speed, this is not a case to enlarge him on bail. The case exhibits Arrogance of youth and money power. It also reflects the menace of Drunker Driving in Cities. The incidents are increasing.

5. While it is true that the applicant was driving a vehicle, which met with an accident, as far as the applicant is concerned, it is the specific case that he was driving after consuming liquor and under its influence the car was driven at a very high speed. He was unable to control the same. The net result is that the car went off the Main Road on to pavement/footpath. It ran over the labourers who were sleeping at the site of Road Repairs. Thus, this incident resulted in the death of those who were sleeping on the pavement. This is not the stage to go into the Rival Contentions. Learned APP emphasises that the case squarely falls within Section 304 of IPC as observed by the learned Addl. Sessions Judge. Mr. Mundargi disputes the same. He submits that there is a specific provision in the IPC to deal with such incidents. In any event, in the facts of this case, Section 304 is not attracted at all. As observed above, this is not the stage to decide this aspect. It is open for parties to place their case before the learned Metropolitan Magistrate and it is for him to decide about the appropriate course to be adopted. As held by the Hon'ble Supreme Court in AIR 2004 SC 1189 (State vs. Salman Salim Khan) the learned Magistrate should consider this issue at an appropriate stage of Trial. As at present, he is not

bound by the observations of Ld. Addl. Sessions Judge. It is bearing in mind the note of caution sounded by the Hon'ble Supreme Court that I refrain from making any observations on merits of the charges. All contentions of both sides are expressly kept open.

6. The applicant is a young man of 21 years. There are no other antecedents. Except the applicant everybody is enlarged on bail. Now, the investigations are complete and the learned APP states that the charge-sheet would be filed within four weeks from today. Thus, applicant's request for enlarging him on bail can be granted by imposing stringent conditions. Hence, the following order:-

ORDER :

(i) The applicant arrested in connection with C.R.No.436 of 2006 registered with Khar Police Station, Mumbai shall be enlarged on bail in the sum of Rs.25,000/= with one or two local sureties in the like sum;

(ii) The applicant shall report to Khar Police

Station, Mumbai once in a week till the filing of the chargesheet and thereafter as per directions of the trial court.

(iii) The applicant shall deposit his passport forthwith with Khar Road Police Station. Deposit of passport is a condition precedent for release of applicant on bail. The applicant shall not leave the country without taking prior permission from the trial court.

(iv) The applicant shall furnish his address to the Investigating Officer where he proposes to reside after bail and during pendency of the trial. The applicant shall not change his residence without prior intimation to the Investigation Agency;

(v) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence;

(vi) The applicant shall cooperate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail;

(vii) Any observation/s made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(viii) Application is disposed of in above terms.

6. Mr. Mundargi states that within a period of one week from today the amount of Rs.3,50,000/= would be deposited with the Investigating Officer. The Investigating Officer to take steps to disburse the said amount in the proportion recorded above and such disbursement shall be made as expeditiously as possible, after identifying the families of victim and within a period of four weeks from the date of deposit. This deposit shall not absolve the applicant from any other liability including payment of compensation under the general law. Equally, disbursement and receipt of such compensation would not deprive and take away the right of

family members of deceased and injured to claim such compensation as is payable to them under General law. All contentions of both sides in that behalf are expressly kept open.

7. Since the incidents of rash and negligent as well as drunken driving are increasing in this City and the investigating machinery so also all concerned being unable to control them, the only way to deal with such acts is by directing that the trial be expedited. The menace can be controlled only if the guilty are brought to book and punished expeditiously. It is in Public Interest that such cases are disposed off early. The witnesses are labourers who have no permanent residence and roots in Mumbai. They are from Andhra Pradesh and Karnataka State. They are moving around with the contractors. Hence, the learned judge shall endeavour and dispose of this case as expeditiously as possible and within a period of six months from the date of receipt of copy of this order.

(S.C.Dharmadhikari, J.)